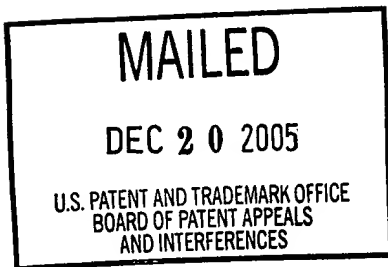


The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Ex parte STEVEN P. UNGETHEIM, WILLIAM E. GEST and DAVID H. EATON JR.



Appeal No. 2005-1986
Application No. 09/844,876

ON BRIEF

Before FRANKFORT, NASE, and BAHR, Administrative Patent Judges.
NASE, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 2, 4 to 9 and 11. Claim 10, the only other claim pending in this application, has been objected to as depending from a non-allowed claim.

We REVERSE.

BACKGROUND

The appellants' invention relates to a wheelchair ramp for a minivan and, in particular, to a battery powered, folding ramp that is powered by a motor under the floor of the minivan (specification, p. 1). A copy of the dependent claims under appeal is set forth in the appendix to the appellants' brief. Claim 11, the only independent claim on appeal, reads as follows:

A minivan adapted for wheelchair access by a folding ramp having one end attached to the minivan by a hinge and by a drive mechanism including an electric motor having a rotor shaft coupled to said folding ramp for raising or lowering the ramp by rotating the folding ramp about said hinge, characterized in that:

said drive mechanism is located beneath the floor of the minivan;
said rotor shaft is substantially parallel with said hinge and includes a pair of arms coupled to said rotor shaft;
said ramp includes a pair of brackets;
said drive mechanism includes a pair of shafts extending underneath said hinge and coupling the arms to the brackets, whereby rotation of the rotor shaft causes rotation of the ramp about said hinge.

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Vartanian	5,542,811	Aug. 6, 1996
Eisen	5,612,515	Mar. 18, 1997
Roth-Stielow et al. (Roth-Stielow)	6,081,086	June 27, 2000
Petersen, Jr. et al. (Petersen)	6,179,545	Jan. 30, 2001

Claim 11 stands rejected under 35 U.S.C. § 103 as being unpatentable over Petersen in view of Eisen.

Claims 2, 4 and 6 stand rejected under 35 U.S.C. § 103 as being unpatentable over Petersen in view of Eisen and Vartanian.

Claims 5 and 7 to 9 stand rejected under 35 U.S.C. § 103 as being unpatentable over Petersen in view of Eisen, Vartanian and Roth-Stielow.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellants regarding the above-noted rejections, we make reference to the answer (mailed November 3, 2004) for the examiner's complete reasoning in support of the rejections, and to the brief (filed July 26, 2004) for the appellants' arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellants' specification and claims, to the applied prior art references, and to the respective positions articulated by the appellants and the examiner. Upon evaluation of all the evidence before us, it is our conclusion that the evidence adduced by the

examiner is insufficient to establish a prima facie case of obviousness with respect to the claims under appeal. Accordingly, we will not sustain the examiner's rejection of claims 2, 4 to 9 and 11 under 35 U.S.C. § 103. Our reasoning for this determination follows.

In rejecting claims under 35 U.S.C. § 103, the examiner bears the initial burden of presenting a prima facie case of obviousness. See In re Rijckaert, 9 F.3d 1531, 1532, 28 USPQ2d 1955, 1956 (Fed. Cir. 1993). A prima facie case of obviousness is established by presenting evidence that would have led one of ordinary skill in the art to combine the relevant teachings of the references to arrive at the claimed invention. See In re Fine, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988) and In re Lintner, 458 F.2d 1013, 1016, 173 USPQ 560, 562 (CCPA 1972).

Petersen's invention generally relates to the field of powered assemblies for deploying or stowing a ramp in a vehicle, such as a bus or the like. Figure 1 shows a flip-over ramp assembly 10 used at the front doorway 4 or a rear doorway of a vehicle 2. The ramp assembly 10 comprises a mounting enclosure 12 and a generally rectangular shaped ramp member 14. The mounting enclosure 12 is conventionally mounted on the floor 6 adjacent to the doorway 4 of the vehicle. As shown, the mounting enclosure 12 and the ramp member 14 are pivotably connected at their

adjacent horizontal edges by a hinge 16 which provides a horizontal axis for movement of the ramp member 14 between an extended or deployed position as shown, where the ramp member 14 slopes down from the vehicle floor to a sidewalk (not shown), and a stowed position inside the vehicle 2, abutting against and parallel to the mounting enclosure 12 (see Figure 5). Figure 2 shows the interior of the mounting enclosure 12 without its top cover plate and a partial ramp member 14 which can be rotated between the stowed and deployed positions by a ramp driving mechanism 17. The ramp driving mechanism 17 may be powered by hydraulic, electrical or pneumatic means, preferably powered by hydraulic means. The driving mechanism 17 comprises an actuator 18 and a horizontal driving shaft 20 or driving means which is rotatably connected to the actuator 18 and extends to the sides 60 of the mounting enclosure 12 and secured thereto by mounting brackets 62. Referring now to Figures 2, 3 and 4, the driving shaft 20 moves the ramp member 14 along an arc path by means of a pair of opposite pivotable linkage assemblies 26 and 27. Each linkage assembly comprises a first arm 28 and a second arm 30, and both are pivotably connected at their adjacent ends 31 by a pivot pin 39. The free end 32 of the first arm 28 is coupled to an end of the driving shaft 20 while the free end 34 of the second arm 30 is attached to the sidewall 58 of the ramp member 14.

Eisen's invention relates to a weighing scale having a weighing platform that can be pivoted upwardly from a lowered operational position to a raised non-operational position to reduce the required floor space thereof so that the weighing scale can be conveniently moved to another location for use or storage. Figure 1 shows a weighing scale 10 in a lowered operational position. The weighing scale 10 includes a support member 12 having a weighing platform 14 pivotally connected to an inner longitudinal side thereof. A stabilizing member 16 is also pivotally connected to the support member 12 on the same side as the weighing platform 14. The mechanism for raising and lowering the weighing platform 14 is set forth Eisen at column 5, line 8, to column 6, line 14.

In the rejection of claim 11, the examiner (answer, pp. 4-5) first ascertained that Petersen does not teach the drive assembly as being below the hinge of the folding ramp and then concluded that it would have been obvious to one of ordinary skill in the art at the time of invention was made to provide the device taught by Petersen with an actuation assembly as taught by Eisen in order to allow the ramp to be folded mechanically while keeping the moving part covered, thereby preventing the device from injuring anyone near the device.

The appellants first argue (brief, pp. 4-5) that the examiner did not correctly ascertain the differences between the prior art and claim 11. In particular, the appellants point out that Petersen does not disclose a minivan as recited in claim 11. The appellants further argue (brief, pp. 5-6) that absent the use of impermissible hindsight reconstruction the claimed invention is not suggested by the teachings of Petersen and Eisen. We agree with both arguments.

It is blatantly clear the claim 11 is drawn to a minivan having a folding ramp with the drive mechanism for the folding ramp located beneath the floor of the minivan. The examiner's position (answer, p. 7) that "[t]he intended use of the instant invention is in a minivan, but no structure for that van is claimed or needed for the structure as claimed to operate" is simply ludicrous. Claim 11 is clearly drawn to a minivan having a ramp for allowing a wheelchair to access the minivan. A minivan having such a ramp is not suggested by the applied prior art (i.e., Petersen and Eisen) since that art does not disclose a minivan. As such, a prima facie case of obviousness of the subject matter of claim 11 has not been established since the examiner has not presented any evidence that would have led one of ordinary skill in the art to combine the relevant teachings of the applied prior art to arrive at the claimed invention.

In addition, appreciating that other prior art of record (i.e., U.S. Patent No. 5,871,329) teaches a minivan having a ramp for allowing a wheelchair to access the minivan,¹ we have also determined that the teachings of Petersen and Eisen are so disparate that it would not have been obvious at the time the invention was made to a person having ordinary skill in the art to have modified Petersen by the teachings of Eisen as set forth in the rejection under appeal. In our view, the only suggestion for modifying Petersen in the manner proposed by the examiner stems from hindsight knowledge derived from the appellants' own disclosure. The use of such hindsight knowledge to support an obviousness rejection under 35 U.S.C. § 103 is, of course, impermissible. See, for example, W. L. Gore and Assocs., Inc. v. Garlock, Inc., 721 F.2d 1540, 1553, 220 USPQ 303, 312-13 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984).

For the reasons set forth above, the subject matter of claim 11 is not suggested by the applied prior art (i.e., Petersen and Eisen). Accordingly, the decision of the examiner to reject claim 11 under 35 U.S.C. § 103 is reversed.

¹ Which prior art may have made it obvious at the time the invention was made to a person having ordinary skill in the art to have mounted Petersen's folding ramp in a minivan.

We have reviewed the references to Vartanian and Roth-Stielow additionally applied in the rejection of dependent claims 2 and 4 to 9 but find nothing therein which makes up for the deficiencies of Petersen and Eisen discussed above with respect to parent claim 11. Accordingly, the decision of the examiner to reject claims 2 and 4 to 9 under 35 U.S.C. § 103 is reversed.²

² Dependent claim 2 appears to be inconsistent with parent claim 11. Specifically, claim 11 recites that the electric motor has a rotor shaft that is substantially parallel with the hinge and includes a pair of arms coupled to the rotor shaft. As such, the corresponding structure disclosed in the detailed description to the rotor shaft is drive shaft 17 with arms 21 and 23. Claim 2 recites that the drive mechanism includes a reduction gear having an input coupled to the rotor shaft and having an output shaft and a drive shaft coupled to said output shaft. However, there is no disclosure of a rotor shaft being both coupled to the input of a reduction gear as set forth in claim 2 and having arms coupled thereto as set forth in claim 11. This situation should be addressed by the appellants and the examiner upon the return of jurisdiction of this application to the examiner.

CONCLUSION

To summarize, the decision of the examiner to reject claims 2, 4 to 9 and 11 under 35 U.S.C. § 103 is reversed.

REVERSED



CHARLES E. FRANKFORT
Administrative Patent Judge



JEFFREY V. NASE
Administrative Patent Judge



JENNIFER D. BAHR
Administrative Patent Judge

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Appeal No. 2005-1986
Application No. 09/844,876

Page 11

PAUL F. WILLE
6407 EAST CLINTON STREET
SCOTTSDALE, AZ 85254

JVN/ki